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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Implementation of Sections of
the Cable Television Consumer
Protection and Competition Act
of 1992

Rate Regulation

MM Docket No. 92-266

To: The Commission

PETITION FOR RECONSIDERATION

Pursuant to Commission Rule 1.429, Superstar Connection^{1/} hereby petitions the Commission to reconsider one important paperwork issue relating to the Commission's Report & Order adopting rate regulation under the Cable Act of 1992. In establishing standards and procedures for "effective competition" studies by cable systems, the Commission determined that:

cable operators may request from a competitor information regarding the competitor's reach and number of subscribers. A competitor must respond to such requests within 15 days. Such responses may be limited to numerical totals.

§ 76.911(b)(2)

^{1/} Superstar Connection distributes superstations and other cable programming to home satellite dish "HSD" subscribers throughout the United States.

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In spite of the specific language in the Commission's rules and in the Report & Order on rate regulation, some cable operators are requesting specific subscriber information including a list of subscribers and street addresses as well as zip codes. Superstar Connection is, therefore, requesting that the Commission reaffirm its decision to require it to produce, in response to requests under § 76.911(b)(2), only aggregate data that can reasonably be extracted from the company's data base. Demands for customer lists, street addresses and other specific subscriber information is clearly contrary to the terms and intent of the Commission's rules and the 1992 Cable Act.

Moreover, such requests would be extremely burdensome on Superstar Connection. Where a cable operator seeks the information from local program distributors, such as a SMATV or MMDS operator, responses could be easily limited to local subscribers.

responding to so many requests for information places a tremendous burden and expense on companies such as Superstar Connection, even if the information is limited to aggregate numbers which are available from our data base. The great majority of program distributors to the HSD market are extremely small companies that do not have the personnel or financial resources to handle the expense of massive new information processing requirements these information requests will generate. Requiring more than aggregate numbers of subscribers would be clearly oppressive and would likely consume the entire resources of Superstar Connection to comply with potentially thousands of requests. Such a result would be contrary to the basic purpose of the 1992 Cable Act and the Commission's rules which were intended to encourage the development of competitive sources of video programming.

Furthermore, there is no valid reason for requiring subscriber lists to be turned over to a competitor who could then focus its marketing efforts on that subscriber list. Indeed, subscriber lists have traditionally been considered confidential business information under the Freedom of Information Act, Exemption 4, and exempt from public inspection or disclosure.^{3/}

^{3/} The Commission has implemented regulations adopting the FOIA exemptions. See 47 U.S.C. § 0.457 and 47 U.S.C. § 0.459.

See, e.g. Timken Co. v. United States Customs Service, 531 F. Supp. 194, 201 (D.D.C. 1984) (Publication of confidential information concerning customers is likely to cause strenuous objections from those customers and disrupt customer relations.); accord Doherty v. FTC, 1981-2 Trade (Cas. CCH) P 64117 (D.D.C. 1981; see also Greenberg v. FDA, 803 F.2d 1213, 1217 (D.C. Cir. 1986). We also believe that handing over our customer lists would violate our subscribers' right to privacy. See Painting and Drywall Work Preservation Fund v. HUD 936 F.2d 1300, 1303 (D.C. Cir. 1991) (disclosure of addresses would constitute substantial invasion of privacy); Ditlow v. Shultz 379 F. Supp. 326 (D.D.C. 1974).

We recognize that the Commission intends to conduct a rulemaking proceeding to establish reporting requirements which will enable cable operators to utilize information available at the Commission in making their effective competition studies. See Report & Order at n.145. Superstar Connection intends to participate fully in that proceeding. In the meantime, we urge the

[Footnote Continued]

In addition, in the context of rate regulation, the Commission recently required franchising authorities to treat documents obtained from cable operators consistently with the FOIA exemptions. See Report & Order in MM Docket 92-266 at paragraph 131, n.349.

Commission to reemphasize its own conclusions adopted in the rate
regulation Report & Order that only aggregate data -- not spe-